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of the illegality. The illegality of a combination or agreement of copyright-holders and patentees taints the transactions of the combination and its members just so far and only so far as it would, were the property involved not the subject of patents and copyrights.<sup>6</sup> Thus a contract licensing the sale of a patented article, made in direct pursuance of the unlawful objects of an illegal combination is held unenforceable.<sup>7</sup> On the other hand, in a suit brought by the owner for the infringement of a copyright or patent, it is no defence that the plaintiff is an illegal combination or a member of it.<sup>8</sup>

**ESTOPPEL AGAINST STATE AND UNITED STATES.** — At common law and in some of our states, estoppel could not be set up against the sovereign.<sup>1</sup> It is now clear, however, that estoppel by record applies to the state or federal government. Thus, when a state recovered judgment for taxes due during certain years, it was estopped in another action to recover an alleged balance for the same years.<sup>2</sup> By the weight of authority, also, estoppel by deed may be set up against the government. Thus, where a state, for valuable consideration, granted land to an alien, his heirs and assigns, with warranty, it was estopped to set up the alienage of the grantee or of his heirs as ground of an escheat.<sup>3</sup> Estoppel *in pais*, or equitable estoppel, against the government, however, has not in general met with favor among the states.<sup>4</sup> In support of the prevailing view, courts find an analogy in the rules exempting the state from the operation of the statute of limitations and from the doctrine of laches. But the government is here exempt not from any notion of extraordinary prerogative, but for reasons of public policy. Since the fiscal transactions of the government are so numerous and its agents so scattered, it is apprehended that the utmost diligence on the part of the government might not save the people from loss through outlawed claims. Estoppel *in pais*, however, rests on principles of universal justice. "When matter of estoppel arises, the observance of honest dealing may become of higher importance than the preservation of the public domain."<sup>5</sup> When the government engages in commercial transactions, it is subject to the same laws that govern individuals. Thus, when it becomes a party to negotiable paper, it has the rights and assumes the liabilities of individuals in a similar position, except that it cannot be sued.<sup>6</sup> There seems, therefore, no good reason why the government should not be estopped, like an individual.<sup>7</sup>

<sup>6</sup> 1 Page, Contracts 698. See *Strait v. National Harrow Co.*, 51 Fed. Rep. 819, 820.

<sup>7</sup> *National Harrow Co. v. Hench*, 76 Fed. Rep. 667; affirmed in 83 Fed. Rep. 36. Cf. *Gamewell, etc., Co. v. Crane*, 160 Mass. 50; *Vulcan Powder Co. v. Hercules Powder Co.*, 96 Cal. 510.

<sup>8</sup> *Edison, etc., Co. v. Sawyer-Iman, etc., Co.*, 53 Fed. Rep. 592; *American, etc., Co. v. Green*, 69 Fed. Rep. 333; *General Electric Co. v. Wise*, 119 Fed. Rep. 922. But see *contra*, *National Harrow Co. v. Quick*, 67 Fed. Rep. 130.

<sup>1</sup> See *Queen v. Delme*, 10 Mod. 199, 200; *Taylor v. Shufford*, 4 Hawks (N. C.) 116, 132; *State v. Williams*, 94 N. C. 891, 895.

<sup>2</sup> *Bridge Co. v. Douglass*, 12 Bush (Ky.) 673, 716. See also *Fendall v. United States*, 14 Ct. of Cl. 247.

<sup>3</sup> *Commonwealth v. André*, 3 Pick. (Mass.) 224.

<sup>4</sup> See *People v. Brown*, 67 Ill. 435.

<sup>5</sup> *United States v. Willamette Val. & C. M. Wagon-Road Co.*, 54 Fed. Rep. 807, 811.

<sup>6</sup> *United States v. Bank of Metropolis*, 15 Pet. (U. S.) 377, 392; *United States v. Barker*, 12 Wheat. (U. S.) 559.

<sup>7</sup> See *United States v. Stinson*, 125 Fed. Rep. 907; *State v. Flint & P. M. R. R.*, 89 Mich. 481; *State v. Milk*, 11 Fed. Rep. 389.

Enactments or resolutions of the legislative body clearly estop the government. Where the legislature, by public resolve, declared a certain monument to be the one referred to in an ancient Indian deed, the state was estopped from showing afterwards that it was not the monument referred to.<sup>8</sup> The acts of its agents, when fraudulent or unauthorized, do not estop the government, even when the agents act within the apparent scope of their authority; but this rule may be rested on the presumption of law that those who deal with public officers know the extent of their authority.<sup>9</sup> On the other hand, acts of agents as well as of the legislature, ought to estop the government, if the agents are authorized to shape its conduct in a particular transaction and have acted within the purview of their authority. Where, for instance, under a mistake of fact a public officer overpaid a corporation for its services in carrying the mail, the government was estopped to recover this money from a second corporation which had become the owner of the first, relying on the settlements made with the first by the agent of the government.<sup>10</sup> Even those courts, however, which accept the general principle that the state may be estopped *in pais* by acts of its agents seem still to be feeling their way, and apply the principle with extreme caution. A recent federal decision furnishes a good illustration of this attitude. *Walker v. United States*, 139 Fed. Rep. 409 (Circ. Ct., M. D. Ala.). The facts of the case were strong, and the estoppel was allowed, but the court circumspectly declined to commit itself to a more concrete declaration than that the rule would be applied "in a proper case." What is a proper case no court seems yet to have attempted to define.

LEGISLATIVE AUTHORIZATION OF NUISANCES.—Varying expressions of opinion are found in the books as to how far a legislature can authorize what would otherwise be a private nuisance, without providing for the constitutional compensation for the "taking" of private property. The cases seem to confine this form of protection rather strictly to instances of an actual seizure of physical property.<sup>1</sup> When, for example, a chartered railroad encroaches upon none of his land, a person whose real estate deteriorates in value by reason of the smoke, noise, and other concomitants of the proper operation of the road has no redress.<sup>2</sup> But if part of the plaintiff's land is occupied, compensation is often made not only for that portion and for the diminution in value of the remainder caused by the alteration in shape and size, but for the further depreciation resulting from the inevitable smoke, noise, cinders, and jarring created in the operation of the railroad on the portion condemned.<sup>3</sup> Thus, under the guise of compelling payment for land taken, are exacted damages for what is practically a nuisance to be maintained on that land. This eminently equitable result could, however, be reached without artifice simply by placing a less strict construction

<sup>8</sup> *Commonwealth v. Pejepscut*, 10 Mass. 155.

<sup>9</sup> *Dement v. Rokker*, 126 Ill. 174, 199; *Filor v. United States*, 9 Wall. (U. S.) 45.

<sup>10</sup> *Duval v. United States*, 25 Ct. of Cl. 46. See also *Hartson v. United States*, 21 Ct. of Cl. 451; *People v. Stephens*, 71 N. Y. 527, 561.

<sup>1</sup> See *Garrett v. Lake Roland El. Ry. Co.*, 79 Md. 277.

<sup>2</sup> *Beseman v. Pennsylvania R. R. Co.*, 50 N. J. Law 235; *Carroll v. Wisconsin Cent. Co.*, 40 Minn. 168.

<sup>3</sup> *Bangor, etc., R. R. Co. v. McComb*, 60 Me. 290. See *Walker v. Old Colony, etc., Ry. Co.*, 103 Mass. 103.